IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 1240 OF 2003

Balakrishna Dasharath Pawar .. Appellant

versus

The State of Maharashtra & anr. .. Respondents

...

Mr. Niteen V. Pradhan for the appellant.

Mr. A.M.Shringarpure, APP for the State.

CORAM : V.M. KANADE, J

DATED : 15th October 2004.

ORAL JUDGEMENT :-

1. The appellant is challenging the judgement and order passed by the third Adhoc Addl. Sessions Judge, Sangli in Sessions Case no.59 of 2003. By the said judgement and order dated 16th August 2003, the appellant accused was convicted under the

provisions of section 376 of the IPC and was sentenced to undergo RI for 10 years and to pay fine of Rs.3,000/- and in default to suffer RI for one year. He was also convicted u/s.506 of the IPC and sentenced to suffer RI for five years and to pay fine of Rs.3,000/- and in default to suffer RI for six months.

2. The prosecution case in brief is that the appellant had raped the prosecutrix on 12th December 2002 in his sugarcane field. The trial Court convicted the accused on the basis of the evidence adduced on behalf of the prosecution.

3. The learned counsel appearing on behalf of the appellant submitted that the prosecution had reasonably failed to prove beyond reasonable doubt that the accused had committed rape on the prosecutrix. It was submitted that the testimony of the prosecutrix was not corroborated by the medical evidence which clearly showed that there was no evidence of any external or internal injuries to the prosecutrix either on her private parts or other parts of the body. It was submitted that the Doctor who had examined the prosecutrix had clearly stated

that he was more than 18 years of age. The learned counsel appearing on behalf of the appellant has taken me through the evidence adduced by the prosecution. He submitted that from this evidence, it could not be inferred that the appellant had committed an offence u/s.376 or 506 of the IPC. The learned APP appearing on behalf of the State however vehemently opposed the submissions made by the learned counsel appearing on behalf of the appellant. He submitted that the trial Court had given cogent reasons after appreciating the evidence on record and there was no reason to interfere with the said finding recorded by the trial Court.

4. The prosecution has examined in all 8 witnesses out of which PW no.1 Fatima Patel is the prosecutrix. PW no.2 Sardar S. Patel is the husband of the prosecutrix. PW nos. 3 and 4 are the Doctors who examined the prosecutrix and the accused. PW no.5 Bajarang Patil is a panch witness who has drawn the spot panchnama. PW no.6 Bhikaji Shelke who had accompanied the prosecutrix and the appellant in the bullock cart on the date of the incident. PW no.7 Abdul Mulla is the uncle of the prosecutrix and PW no.8 Vasant Babar is the

Investigating Officer. From the evidence of PW no.3 Dr.Sanjay Bhave, it transpires that no external injuries were found on the person of the prosecutrix. Similarly, there were no external or internal injuries to her private parts. He has also stated that she was above 18 years of age. The Doctor has given medical certificate to that effect that has been exhibited as Exhibit-15. The said certificate also indicates that no external or internal injuries were found on the private parts of the prosecutrix or any other part of the body. The short question which falls for consideration is as to whether from the evidence of the prosecutrix, it could be said that the accused had raped her. PW no.1 has stated in her evidence that on the date of the incident her husband had gone to another village and that her mother had gone towards the agricultural land of the accused for doing labour work. Then after the accused came to her house informed her to join her mother for the purpose of doing the labour work. She has further deposed that the accused requested her to come along with him on the bullock cart. Accordingly, she went along with the accused in the bullock cart. Thereafter, the appellant took her towards the sugarcane field. At

that place, he caught the hands of the prosecutrix and threatened to kill her and thereafter he had forcible sexual intercourse with her. The prosecutrix then met her aunt and narrated the story to her and a complaint was lodged by her husband in the police station. The prosecutrix has been cross-examined at length. She has admitted that it took about 15 to 20 minutes to go to the land from the place where she resided. From her evidence in the cross examination, it can be seen that one Sharad Kulkarni had come to meet them while going towards the land of the accused. Further, it can be seen that there were number of other land adjoining the sugarcane field of the accused. It is difficult to accept the case of the prosecutrix that she would accompany the accused to the sugarcane field and travel distance on the bullock card for about 15 to 20 minutes. It can be seen from her evidence that the relations between the prosecutrix and the accused were cordial. Though she has admitted that there was a hot exchange of words between the accused and the prosecutrix that though he had abused her in a filthy language and that she had started crying. It is difficult to accept the story of the prosecutrix that the accused had committed

rape on her particularly when there were no injuries found on the person of the prosecutrix. Similarly, there were no injuries on her private parts. There were no scratches on her back though she has stated in her evidence that there was a scuffle which lasted for about 5 minutes. If story of the prosecutrix is to be accepted, The natural consequence of the story as narrated by the prosecutrix is that there would have been injuries on the person of the prosecutrix and in any event either the clothes of the prosecutrix or the accused would have been torn. Even the bangles that she was wearing had not broken. Further, she was carrying a cutting instrument which is known as khurpe in her hand. She has stated that the said khurpe had fallen down from her in the scuffle. The prosecutrix was more than 18 years old was carrying a khurpe in her hand. It is difficult to accept her case that the accused had caught hold of her hand particularly when she was carrying the said khurpe which could have been used as a weapon to save herself from the clutches of the accused. The prosecution has not examined her mother who would have corroborated her evidence by stating whether she had infact been told by the accused to go to the

agricultural field of the accused. However, the prosecution has not examined her as a witness. Even otherwise, it is difficult to accept the case of the prosecution that prosecutrix would on her own follow the accused and go to his agricultural field. Ordinarily, she would have preferred to accompany her husband or her mother. Thus, it is difficult to accept the prosecution case that the prosecutrix was raped by the accused without her consent. Under the circumstances, the finding of the trial Court that prosecutrix was raped by the accused will have to be set aside. Benefit of doubt will have to be given to the accused.

5. Appeal is accordingly allowed. Conviction of the appellant accused u/s.376 r/w sec.506 of the IPC is set aside and the judgement and order is also set aside. The accused be released forthwith unless he is otherwise required in any other case.

V.M. KANADE, J